

# Federal Advisory Committee (FAC) Membership Balance Plan

## U. S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

### (1) FEDERAL ADVISORY COMMITTEE NAME

*Whistleblower Protection Advisory Committee (WPAC)*

### (2) AUTHORITY

*The WPAC is established and operates in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), its implementing regulations (41 CFR Part 102-3), chapter 1600 of Department of Labor Management Series 3 (Mar. 17, 2008), Secretary of Labor's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012), and the Secretary of Labor's authority to administer the whistleblower provisions found in Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. § 660(c); the Surface Transportation Assistance Act, 49 U.S.C. § 31105; the Asbestos Hazard Emergency Response Act, 15 U.S.C. § 2651; the International Safe Container Act, 46 U.S.C. § 80507; the Safe Drinking Water Act, 42 U.S.C. § 300j-9(i); Federal Water Pollution Control Act, 33 U.S.C. § 1367; the Toxic Substances Control Act, 15 U.S.C. § 2622; the Solid Waste Disposal Act, 42 U.S.C. § 6971; the Clean Air Act, 42 U.S.C. § 7622; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610; the Energy Reorganization Act, 42 U.S.C. § 5851; the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century, 49 U.S.C. § 42121; the Sarbanes-Oxley Act, 18 U.S.C. § 1514A; the Pipeline Safety Improvement Act, 49 U.S.C. § 60129; the Federal Railroad Safety Act, 49 U.S.C. § 20109; the National Transit Systems Security Act, 6 U.S.C. § 1142; the Consumer Product Safety Improvement Act, 15 U.S.C. § 2087; section 1558 of the Affordable Care Act, 29 U.S.C. 218C the Consumer Financial Protection Act of 2010, 12 U.S.C § 5567; the Seaman's Protection Act, 46 U.S.C. § 2114; section 402 of the FDA Food Safety Modernization Act, 21 U.S.C. 3990; and the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. §30171.*

### (3) MISSION/FUNCTION

*WPAC advises the Secretary of Labor (Secretary) on ways to improve the fairness, efficiency, and transparency of OSHA's whistleblower investigations.*

### (4) POINTS OF VIEW

*WPAC membership is established by the WPAC charter. WPAC will consist of 12 voting representative members appointed by the Secretary, one of whom the Secretary appoints to serve as chair. The composition of the WPAC will be as follows:*

- *Four members will represent Management in industries covered by the whistleblower laws;*
- *Four members will represent Labor in industries covered by the whistleblower laws;*
- *One member will represent the State OSH Plan states; and*
- *Three members will represent the public with extensive knowledge and expertise on whistleblower statutes and issues.*

*The labor representative category is comprised of four workers, labor unions, and/or worker advocacy organizations that are the source of complaints. The management representative*

## FAC MEMBERSHIP BALANCE PLAN, continued.

*category is comprised of four employers and/or employer associations in industries who are the subject of investigations. In addition, since 27 states and territories operate their own OSHA-approved State Plans and enforce whistleblower provisions 11(c) related to the Occupational and Safety and Health Act 1970 in those states, one representative from the State Plan states will be included on the Committee. Finally, to assure that the Agency can draw upon public representatives who have extensive knowledge, experience and expertise on whistleblower issues, the Committee will also include three public representatives from colleges, universities, non-partisan think tanks, and/or other entities with substantial knowledge of and experience with whistleblower issues.*

*The Committee will also be informed by the inclusion of ex-officio/non-voting regular government employee representatives from other: 1) Department of Labor (DOL) agencies that are directly or indirectly involved in worksite investigations, such as DOL's Wage and Hour Division and 2) Federal Government agencies that have jurisdiction over statutes with whistleblower provisions will also be asked to participate; for example, the Securities and Exchange Commission (Sarbanes-Oxley Act) and the Department of Transportation's Federal Aviation Administration (Wendell H. Ford Aviation Investment and Reform Act for the 21st Century).*

### **(5) OTHER BALANCE FACTORS**

*To the extent permitted by FACA and other laws, WPAC membership should also be consistent with achieving the greatest impact, scope and credibility among diverse stakeholders. The diversity in such membership includes, but is not limited to, race, gender, disability, sexual orientation and gender identity.*

### **(6) CANDIDATE IDENTIFICATION PROCESS**

*The Occupational Safety & Health Administration (OSHA) will employ a multi-faceted approach to inform the general public, as well as the Department's workforce, regarding vacancies on the Committee; and the period and requirements for submitting nominations. The following steps are among those that OSHA will take to solicit a broad and diverse range of qualified candidates. OSHA will submit a public notice announcing the number of vacancies, the requirements for submitting nominations to OSHA, as well as the period for submitting nominations. To promote widespread notification of these vacancies, OSHA will also work with other agencies in the Department of Labor, other government agencies, and with diverse stakeholders throughout the country, including professional organizations, academia, and individuals, such as past members of the Committee. OSHA's outreach will include notification to those who have historically had limited awareness of and participation in the Committee and its activities but whose interests may be implicated or affected by the work and/or recommendations of the Committee.*

*OSHA will review all proposed candidates through the Department's internal vetting process to assure compliance with all legal and ethical requirements. OSHA will report on its efforts to the Committee and the Secretary or designee.*

**FAC MEMBERSHIP BALANCE PLAN, continued.**

**(7) SUBCOMMITTEE BALANCE**

*The process for determining balance on subcommittees is the same as the process for the parent Committee.*

**(8) OTHER**

*Not applicable.*

**(9) DATE PREPARED**

*March 2014*